

Gloves about to come off? Representation at disciplinary and grievance hearings

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On 17 March 2021 Brendan Clarke Smith, MP for Bassetlaw and former head teacher, put before Parliament that a Bill should be passed to “provide that teachers and other education staff may choose to be accompanied to disciplinary or grievance hearings by a person other than a trade union representative or a colleague”.

In short, he proposed that the right to be accompanied should be much wider than it is at present. Whilst the Bill itself was withdrawn, the idea lives on and is supported by the Education Secretary.

Indeed, this proposal hit the headlines recently and has come with warnings that it could increase costs for schools if it comes to pass.

While it remains to be seen if the changes occur, if it does the consequences could be significant...

What is the current position and what change is proposed?

The right to be accompanied is currently laid down by Section 10 Employment Relations Act 1999 (“**the Act**”).

Under the Act, an employee has a right to be accompanied at a disciplinary or grievance meeting by a companion who is either:

- another of the employer’s workers; or
- trade union official who is employed by the trade union or certified in writing by the union as having the relevant experience or training to act.

The Act currently does not prohibit another type of representative to attend.

However, whilst the employee can ask for someone other than a TU rep or work colleague to attend, it is solely down to the employer whether they agree or not. This can often lead to requests for representation to be given by:-

- Family members;
- HR consultants; or
- Lawyers.

However, these could be denied by the school because, as set out above, the right was specifically limited to trade union representatives and work colleagues. In other words, the right was no narrower, it was easy to say no to anything other than the minimum requirements.

The suggestion is that this is loosened so that it will allow an employee to be accompanied by any person to these meetings.

This would represent a seismic shift from the status quo.

Why might this be necessary?

Around 77% of workers are not members of a trade union. As a result, there is an argument they are not “properly” supported if they only have a work colleague to assist them.

Clarke Smith stated at the time that the proposed bill is about “strengthening the role of teachers and ensuring the promotion of equal rights in the workplace”.

Certainly, If the right to be accompanied at meetings is extended to those outside of trade union representatives and work colleagues this could hugely benefit teaching staff.

Staff can be supported by someone who has the relevant experience in providing accompaniment at disciplinary and grievance hearings.

This will reduce stress and anxiety to teaching staff when choosing who they bring with them during difficult times.

Clarke Smith has highlighted one example where teaching staff would benefit as being where an unfounded allegation of misconduct is made against a teacher.

In this circumstance, the support of an individual experienced in grievance procedures will stand the individual in better stead at challenging the allegations and continuing their teaching career if they were not a member of a trade union.

So, what’s the downside?

There are a number of problems that may arise if these changes come in:-

- People may choose to bring lawyers into disciplinary and grievance meetings. This will inevitably lead to the employer wanting to respond in kind. “Lawyering Up” may not lead to matters being dealt with quickly or cheaply!;
- It may impact on people’s willingness to join Trade Unions if one of the key benefits (representation) is taken away;
- The line will have to be drawn somewhere – the current rules are simple. Change will add complexity and room for argument. Will the change allow literally any representative? Will Schools have any discretion? If they do, how will a School deal with saying yes to one employee and no to another?

Questions such as the above will have to be ironed out if and when these changes makes their way through Parliament. In the meantime, while well intentioned, with some definite benefits, this proposed change has the potential to cause more problems than it solves.

Ultimately, it may be a case of “better the devil you know”...

Author

[Ian Deakin](#) is an employment partner at Browne Jacobson.

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Contact



Henrietta Scott

Head of Marketing

PRTeam@brownejacobson.com

+44 (0)330 045 2299

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